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NO. 86-376

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STATE OF CONNECTICUT,
Petitioner

v.

EARL BADGETT,
Respondent

ON WRIT OF CERTIORARI TO

THE SUPREME COURT OF CONNECTICUT

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent, Earl Badgett, asks leave to proceed in forma pauperis pursuant to Rule 46. Respondent's Affidavit in support of this Moton is attached hereto. Respondent was permitted to proceed in forma pauperis in the Superior Court of Connecticut dated April 18, 1983.

RESPONDENT
EARL BADGETT

BY: G. Douglas Nash

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Counsel for Respondent

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AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

I Earl Badgett, being first duly sworn, depose and say that I am the Respondent in the above-entitled case; that in support of my Motion for Leave To Proceed In Forma Pauperis, I state that I am confined in the Connecticut Correctional Institution, Enfield and that because of my poverty I am unable to pay the costs of proceedings in this Court or to give security therefor.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of proceedings in this Court are true.

1. Are you presently employed? Yes, I work in the kitchen at Enfield Correctional Center where I am presently incarcerated.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source? Income $37 per month for work at Enfield Correctional Center.

3. Do you own any cash or checking or savings account? Yes, I have a prison account of approximately $125.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.
None at present.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Earl Badgett
EARL BADGETT

STATE OF CONNECTICUT)
) ss ENFIELD
COUNTY OF TOLLAND)

Personally appeared before me Earl Badgett, signer of the foregoing Affidavit, who, being first duly sworn declared the same to be his free act and deed this 3rd day of September, 1986.

Martin Zeldis
MARTIN ZELDIS
COMMISSIONER OF THE SUPERIOR COURT

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BRIEF IN OPPOSITION

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On The Brief:
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Assistant Public Defender

October 6, 1986

QUESTIONS PRESENTED FOR REVIEW

1. Whether this case is ripe for Review by this Court where there is no formal judgment from the Connecticut Supreme Court because this matter was remanded by that court to the Connecticut trial court to conduct further proceedings regarding the validity of the instant vehicle search.

2. Whether this on-site search of respondent's automobile made after respondent's arrest was reasonable under the inventory exception to the Exclusionary Rule when such search was not undertaken pursuant to an on site inventory policy and was not undertaken by officers intending to implement such policy, and when this claim is now raised for the first time in the petition for certiorari to this Court.

3. Whether the search of an automobile incident to the arrest of its driver is rendered unreasonable under the Fourth Amendment when the driver had been removed from it at the time the evidence sought to be admitted was discovered.

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BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Connecticut Supreme Court is reported at 200 Conn. 412, _A.2d_ (1986) and is reprinted in full in the appendix to petitioner's brief.

JURISDICTION

The decision of the Connecticut Supreme Court was rendered on July 8, 1986. The petitioner claims jurisdiction under 28 U.S.C. 1257(3). As will be detailed below the respondent opposes this jurisdictional claim.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

28 U.S.C. §1257(3) provides as follows:

> **§1257. State courts; appeal; certiorari**
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

COUNTER STATEMENT

For the purpose of this brief the respondent does not oppose the petitioner's statement contained at pages two through five of its petition except as follows:

1. At page four of the petition the factual statement contained therein might be interpreted to mean that the search of the black bag was made prior to the respondent being taken from the scene. The conclusion of the Connecticut Supreme Court which is supported by the evidence is that the search of the black bag found in the respondent's automobile was not

made until after the respondent had been removed from the scene. State v. Badgett, 200 Conn. 412, 423, 427-428, Tr. at 30, 79.[1]

2. At page five of its brief the petitioner represents that the State Supreme Court concluded that "because the officers did not search the vehicle pursuant to a formal on-site inventory policy the inventory exception to the warrant requirement was not applicable." The court's opinion adds to the above reason the following as another justification for its holding. "Further, it is clear that the officers' purpose in searching the vehicle at the scene was to investigate and not to inventory the contents." State v. Badgett, supra at 431.

REASONS FOR DENYING THE WRIT

1. **The Instant Connecticut Supreme Court Decision Is Not A Final Judgment.**

The respondent contends that the Connecticut Supreme Court's opinion in State v. Badgett, supra, is not a final judgment. Although the state court's opinion does decide the three presented exceptions to the warrant requirement in the respondent's favor (search incident to an arrest, probable cause and inventory search) the court's decision to remand this case hinges on its discussion of "inevitable discovery" as a possible exception to the exclusionary rule as adopted by this court in Nix v. Williams, 467 U.S. 431 (1984). Interestingly, the court's opinion does not find error or no error; does not reverse or affirm. The court simply remands the case for further proceedings in accordance with the opinion. State v. Badgett, supra at 434. Thus, not only is there not a final judgment here, there is no judgment at all: The Connecticut Supreme Court has simply remanded the matter for futher proceedings without ultimately deciding the case one way or the other.

1. "Tr. at _" refers to the transcript of that portion of the suppression hearing held on February 15, 1983.

The United States Code at 28 U.S.C. §1257 attempts to limit Supreme Court review to final judgments of the highest state court which could review the decision. The purposes of this limited review of state court judgments are threefold: "(1) it avoids piecemeal review of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Article III; (3) it limits review of state court determination of federal constitutional issues to leave at a minimum federal intervention in state affairs." North Dakota Board of Pharmacists v. Snyders Drug Stores Inc., 414 U.S. 156, 159 (1973).

The requirement that review by this court must be predicated upon a final state court judgment has existed since 1887, and although some exceptions have been made to the finality requirement, they are permitted "[o]nly in a very few situations where intermediate rulings may carry serious public consequences..." Radio Station WOW v. Johnson, 326 U.S. 120, 124 (1945). This court still consistently holds that the finality "requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system." Id. at 124. See also Flynt v. Ohio, 451 U.S. 619 (1981); San Diego Gas and Electric Co. v. San Diego, 450 U.S. 621 (1981).

The definative case on the exceptions to the finality rule is Cox Broadcasting v. Cohn, 420 U.S. 469 (1974). While acknowledging the importance of the final judgment rule, the court in Cox set forth four exceptions to the rule as follows:

1. Those cases where there are further proceedings yet to occur but the federal issue is conclusive, or the outcome of further proceedings is preordained. Id. at 479.

2. Those cases in which the federal issue, finally decided by the highest court in the state, will survive and require decision regardless of the outcome of future state-court proceedings. Id at 480.

3. Those cases where the federal claim has been finally decided, with further proceedings on the merits still to come, but in which later review of the federal issue cannot be had, whatever the outcome of the case. Id. at 481.

4. Those cases where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by the Supreme Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceeding still to come. Id. at 482-483.

This Court in Cox further noted that "[i]n most, if not all, of the cases in these categories [the exceptions to the finality rule] these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date...." Id. at 477.

It appears clear that the first three exceptions to the finality requirement of §1287 do not apply here. The federal issue is not conclusive and the outcome of future proceedings is not preordained. The federal issue will not necessarily survive and require decision no matter what the outcome of future proceedings. The federal issue has not been finally decided and even if it had been it cannot be said that review by this court cannot be had no matter what the outcome of the further proceedings.

The petitioner suggests in its petition at footnote 5 that review can be made here pursuant to the fourth exception stated in Cox. In so suggesting the petitioner seriously misstates the standards set by the fourth exception of Cox.

First, even if the federal issues raised by the state have been decided, which is not conceded by the respondent, the standard set by the fourth exception in Cox relates to the federal issue(s) decided by the highest state court, not selective federal issue(s) raised by the petitioner in its petition. Here the federal issue relates to the constitutionality, under the fourth amendment, of the search of respondent's automobile. Since the Connecticut Supreme Court remanded this case for further proceedings related to the constitutionality under the fourth amendment of the instant search, it cannot be said that the Federal issue involved here has been finally resolved.

Second, the fourth exception stated in Cox requires that the futher proceedings ordered by the state court might result in the petitioner prevailing on nonfederal grounds. Since, the further proceedings ordered by the Connecticut Supreme Court relate to another exception of the exclusionary rule as decided by this court in Nix v. Williams, supra, there is no possibility that the petitioner would prevail in the further proceedings on nonfederal grounds. The hearing ordered by the Connecticut Supreme Court was for the consideration of a federal issue.

For these reasons the respondent contends that the petitioner does not meet the requirements of the fourth exception to the finality rule as stated in Cox.

In Flynt v. Ohio, 451 U.S. 619 (1981), the court specifically discussed the applicability of the fourth exception in Cox saying that the requirements of the exception were not met. "The cases which the Cox opinion listed as falling in the fourth category involved identifiable federal statutory or constitutional policies which would have been undermined by the continuation of the litigation in the state courts. (citations omitted). Here there is no identifiable federal policy that will suffer if the state criminal proceeding goes forward." Id. at 622. Likewise here no federal policy will suffer in any way if the proceeding ordered by the Connecticut court goes forward.

This court in Flynt also declined to treat the matter as falling within the final judgment exceptions specified in Cox because there were additional unresolved federal issues which were likely to come up in the further proceedings to be held in the state court. Flynt v. Ohio, supra at 621. Here as discussed above the further proceeding ordered by the Connecticut Supreme Court will necessarily address federal issues of the same type and deal with the same search and the same constitutional principles as those addressed by the Connecticut Supreme Court in its opinion in State v. Badgett, supra. See also San Diego Gas and Electric v. San Diego, 450 U.S. 621 (1981), where the highest California court held that there was no entitlement to a monetary award for an alleged property condemnation but ordered further proceedings to determine if there was any other appropriate remedy. As argued herein by the instant respondent this court held in San Diego that the Cox exceptions did not apply because "further proceedings are necessary to resolve

the federal question whether there has been a taking at all. The court's decision therefore is not final and we are without jurisdiction to review it." San Diego Gas and Electric v. San Diego, supra at 633.

For these reasons the respondent maintains that the court should deny the state's petition for a writ of certiorari. Without a final judgment from the Connecticut Supreme Court, this Court does not have jurisdiction pursuant to 28 U.S.C. §1257 to accept this matter.

In dealing with the two substantive issues raised by the petitioner it should be pointed out that the Fourth Amendment and the relevant cases provide that the normal rule is that a search must be performed pursuant to a warrant. Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); Katz v. United States, 389 U.S. 347, 357; (1967) Chimel v. California, 395 U.S. 752, 760-762 (1969). While the state in its petition points to recognized exceptions to the warrant requirement, it must be remembered that we are addressing exceptions to the rule rather than the rule itself, and whether the search activities performed here qualify under the warrant requirement exceptions raised by the petitioner. The Connecticut Supreme Court held that they did not.

2. When A Search Is Performed Without An Inventory Purpose And Is Not Based Upon Rules Regarding Inventory Searches It Does Not Qualify For The Inventory Search Exception To The Warrant Requirement.

The respondent concedes that inventory searches are a recognized exception to the warrant requiremnt. South Dakota v. Opperman, 428 U.S. 364 (1976). The respondent argues though that the petitioner's attempted extension of this acknowledged exception to the warrant requirement, in order to validate a search when there is no inventory motive and no inventory rules or guidelines to follow, is simply preposterous. As will be shown, this extreme position, advocated now for the first time by the state, is unsupported by any law in any jurisdiction. In addition the petitioner wants this Court to go one step further. It wants this court to hold that even though the Connecticut Supreme Court has followed the clear thrust of Opperman and other precedents in deciding the instant inventory issue, nonetheless the court acted unreasonably in deciding

that an inventory search must have an inventory motive and must be performed pursuant to inventory rules and guidelines.

Despite the state's claim in its petition at page six that certiorari should be granted here because there is conflict in state and federal jurisdictions and resulting confusion relative to the handling of "inventory searches," the respondent maintains that there is no conflict of authority when applying the law to the facts present here; that Connecticut has developed its inventory search law based upon Opperman and has exhibited no confusion whatsoever; and that whatever conflict of authority might exist regarding inventory searches, this case is not an appropriate vehicle for this court to attempt to resolve such alleged conflict. The obvious and natural conclusion of this petitioner's claim goes far beyond inventory searches, because if its position were adopted it would permit any search of anybody and his possessions who is taken into custody no matter what the basis; no matter what the motive.

In contrast to its detailed treatment of the search incident to an arrest and probable cause aspects of the search of respondent's vehicle, the Connecticut Supreme Court was able to succinctly decide the inventory search aspect.

> The state also contends that the warrantless search and seizure of the contents of the black bag were constitutionally permissible in order to inventory the contents of the vehicle. We summarily reject this contention ...
> Although we have recognized the validity of department authorized inventory searches; (citation omitted); the state, as is its burden, did not offer evidence of any police department practice for inventory searches to be conducted on the highway by field officers. Further, it is clear that the officers' purpose in searching the vehicle at the scene was to investigate and not to inventory the contents. The fact that no lists of property were made and that the officers discontinued their search immediately after discovering the contraband indictes that the search was not undertaken to inventory the contents of the vehicle. State v. Badgett, supra at 431.

In South Dakota v. Opperman, supra, this court approved of police inventory searches as an exception to the warrant requirement. See also Cooper v. California, 386 U.S. 58 (1967). In allowing this exception to the warrant requirement this court applied a reasonableness standard to "inventory searches" and set forth guidelines on determining the legitimacy of such searches.

> "The decisions of this court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable.' South Dakota v. Opperman, supra at 372.
>
> "In applying the reasonableness standard adopted by the Framers, this Court has consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents.
> Id. at 373.

The standards announced in Opperman by this court merely state the obvious; that for an "inventory" search to be valid it must be performed for inventory purposes pursuant to standard police procedures. The petitioner concedes, as the Connecticut Supreme Court decided, that such was not done here. Connecticut and other jurisdictions in the ten years since Opperman have relied upon and applied the standards set forth there in determining the reasonableness of inventory searches. For Connecticut see State v. Gasparro, 194 Conn. 86, 108, 480 A.2d 509 (1984); State v. Johnson, 183 Conn. 148, 438 A.2d 851 (1981); State v. Murphy, 6 Conn. App. 394, 401 n.8, 505 A.2d 1251 (1986).

The petitioner points to a number of cases from various jurisdictions which it claims support the contention that neither an inventory purpose nor inventory procedures are necessary for a search to qualify for the inventory exception to the warrant requirement. Upon closer scrutiny it is clear that none of the cited cases stand for this proposition.

Scott v. United States, 436 U.S. 128 (1978), relied on heavily by the petitioner for the claim that an inventory purpose is not necessary, was not an inventory search case; it was a wiretap case. The question decided there was whether a minimization limitation on nonrelated interceptions was complied with. In deciding that the lower court had not improperly decided that the minimization order had not been violated, the court applied a reasonableness standard and looked, as they could in the wiretap situation, to the actions of the police officers in intercepting calls rather than trying to determine the state of mind of the officers when the interceptions were made.

Illinois v. Lafayette, 462 U.S. 640 (1983) was an inventory search of a handbag performed for inventory purposes pursuant to a standardized inventory procedure. All that Lafayette says is that inventory searches are valid to protect the police against certain risks such as false claims by detainees of property loss and department theft or carelessness in handling the property of detainees, and just because the officer making the search does not specifically consider such possibility "the need to protect against such risks arises independently of a particular officer's subjective concerns." Id. at 647.

Although cited by the petitioner in support of its position, Illinois v. Lafayette, holds very much for the respondent's position relative to the need for inventory searches to be performed pursuant to standardized inventory procedures.

> "A standardized procedure for making a list or inventory as soon as reasonable after reaching the station house not only deters false claims but also inhibits thefts or careless handling of articles taken from the arrested person. ... Examining all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure."

Id. at 646.

Lafayette is much more on point regarding whether an inventory

search needs to be performed pursuant to standardized procedures than are Bell v. Wolfish, 441 U.S. 520 (1979) and Michigan v. Tyler, 436 U.S. 499 (1977) cited by the petitioner in support of its contention that standardized procedures are not necessary. Neither Bell v. Wolfish nor Michigan v. Tyler are inventory searches. Wolfish involves a body cavity search. Tyler involves a fire marshall's investigatory search. Both cases deal with the reasonableness of the search. Neither case turns on the lack of procedural standards. In any event, since Lafayette and Opperman deal directly with inventory searches and since both appear to require that such searches be performed pursuant to standardized inventory procedures, the respondent maintains that those rulings are controlling.

Even the lower court cases cited by the petitioner do not support its position. While, when claiming a conflict of authority the petitioner concedes that cases such as United States v. Hellman, 556 F.2d 442, 443-4 (9th Cir. 1977) and State v. Hudson, 390 A.2d 509, 511 (Me. 1979) are supportive of the respondent's position, it points to United States v. Hall, 565 F.2d 917, 922 (5th Cir. 1978); State v. Walker, 579 P.2d 1091, 1098 (Ariz. 1978); Mayhood v. State, 669 S.W.2d 873, 874 (Tex. App., 13 Dist. 1984 pet. ref'd); and United States v. Prescott, 599 F.2d 105-106 (5th Cir. 1979) as supportive of its position. The respondent submits that petitioner's reliance on these cases for the proposition that an inventory search to be valid need not have either an inventory purpose or be performed pursuant to standardized policies is misplaced.

In United States v. Hall, supra at 919, 921-22, Mayhood v. State, supra at 874, and State v. Walker, supra at 1098, the searches all had inventory purposes, inventory forms were completed in at least two of the searches and all the searches were performed pursuant to standard department policy. All three cases hold that if the officer performing the inventory search hopes or

intends to discover evidence during the inventory search, a valid inventory search is not thereby rendered invalid. The respondent here concedes this point, but notes that it has no relevance to the instant situation because there was no valid inventory search performed here.

Even the most extreme case cited by the petitioner United States v. Prescott, supra requires that to be valid an inventory search must have an inventory purpose. "Inventory searches must be limited to effectuation of the recognized purposes for which they are conducted and they may not be used as a pretext for intrusive investigatory searches that would be otherwise impermissible." Id. at 105.

From the foregoing it appears that there is no caselaw which supports the extreme position maintained by the petitioner. Therefore, the claim that this court should grant certiorari in order to reconcile the conflicting authorities is in this instance wholly without merit.

Turning briefly to one final consideration, the respondent is constrained to note that the petitioner raises the inventory argument in this form for the first time in its petition to this court. In fact, at the state level the petitioner elected not to address the inventory exception to the warrant requirement, explaining in its brief that this was "because the record demonstrates that the trial court correctly upheld the search on grounds that it was incident to the defendant's arrest and was based upon probable cause to search for weapons. Therefore, this court can sustain the trial court's ruling on those grounds and need not reach the question of inventory search." Res. App. at 1a.

Although it appears from petitioner's brief that it was abandoning the inventory aspect of the instant search, the respondent concedes that the petitioner never formally did so. But at no time did the state formally address the inventory issue and

it certainly was not ever addressed in the form that is now presented to this court.

This court has consistently held that it will not consider on a petition for certiorari an issue that was not raised below. Heath v. Alabama, ___ U.S. ___, 106 S.Ct. 433, 436-37 (1985); Ellis v. Dixon, 349 U.S. 458, 460 (1955). Therefore, for this additional reason the respondent maintains that this court should decline to grant certiorari to the petitioner as to the "inventory search" issue.

There is no conflict of authority of the sort claimed by the petitioner. Thus, this is not an appropriate case for this court to review because it can not possibly be shown that the Connecticut Supreme Court decided unreasonably when its holding that there was no inventory search here was based upon the clear guidelines set forth by this court in South Dakota v. Opperman, supra.

The petitioner contends that the fruits of a warrantless search should be admitted simply because there exists an inventory exception to the warrant requirement. The state is not troubled by the lack of inventory purpose and is oblivious to the need for standardized inventory rules. Yet rulemaking has a valid purpose in that it "supplies a needed check against arbitrariness in the conduct of various searches and seizures." A. Amsterdam, Perspectives on the Fourth Amendment, 58 Minnesota Law Review 349, 418 (1974). This contention flies in the face of all authorities and would open our highways, our homes and our persons to uncontrolled pretextual searches. The petitioner maintains that the pretextual searches which would result from ruleless and motiveless "inventory searches" should be of no concern to this court because all police powers are subject to abuse through pretextual use. But even the authorities cited by the petitioner express disapproval of the possible pretextual use of inventory searches. See United States v. Hall, supra at 922; United States v. Prescott,

supra at 105. For all these reasons this court should refuse the state's petition for certiorari as to the "inventory" search claim.

3. It Was Reasonable To Conclude That The Search Of Respondent's Automobile Did Not Qualify Under The "Search Incident To An Arrest" Exception To The Warrant Requirement.

The Connecticut Supreme Court decided, based on the evidence that at the time the black bag in respondent's automobile was opened by Officer Kiernan and the white powdery substance discovered within, the respondent had been removed from the scene. State v. Badgett, supra at 423, 427, 428. The court ultimately held "that the right of a police officer to search the vehicle ceases the instant the arrestee departs the scene because the arrestee's removal forecloses any possibility that he could reach for an article within the vehicle." Id. at 428.

The reason for allowing an exception to the warrant requirement for searches made incident to an arrest is to protect police officers from a weapon that the arrestee may grab and use against the police officer and to protect evidence which the arrestee may attempt to reach and destroy. Chimel v. California, 395 U.S. 752, 768 (1969).

In New York v. Belton, 453 U.S. 454 (1981) this court held that "when a policeman has made a lawful custodial arrest of the occupant of the automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Id. at 460. Although Belton was an attempt to establish an understandable, standardized rule which could be easily followed by the police, it was noted by Justice Brennan's dissent in Belton and by subsequent commentators that the Belton rule does not provide the definitive answer for all warrantless vehicle searches made incident to an arrest. Id. at 470; W. LeFave, Search and Seizure, 1986 Supp. §7.1 at 218.

One of the factors left unspecified by Belton is the defini-

tion of "contemporaneous". All that Belton requires is that the search take place as a contemporaneous incident of the arrest. The court therein appropriately left the concept open for the individual courts to determine whether in fact a particular search was indeed "contemporaneous", as such a term can only be evaluated on an ad hoc basis. In the instant case, the definition of the term contemporaneous becomes crucial to the validity of the search of respondent's vehicle. The Connecticut Supreme Court held "that the right of a police officer to search the vehicle ceases the instant the arrestee departs the scene because the arrestee's removal forecloses any possibility that he could reach for an article within the vehicle." State v. Badgett, supra at 428. Thus the Connecticut Supreme Court has defined "contemporaneous" in Belton type searches incident to an arrest to mean the time during which the arrestee is at the scene of the stop. The fruits of any search activities which occur after the arrestee has left the scene will not be admissilbe under the search incident to an arrest exception to the warrant requirement.

The state maintains that this Court should grant its petition and then define "contemporaneous" as including all searches which are commenced while the arrestee is on the scene no matter when they terminate. In answer to this contention the respondent maintains that the definition of "contemporaneous" made by the Connecticut Supreme Court is more appropriate than the definition advocated by the petitioner. Since the rationale for the search incident to an arrest exception as decided by Chimel is to protect the officer and to protect the evidence, and since Belton is an attempt to apply Chimel to the highway arrest, the need for the search ceases the instant that the risk ceases. The risk ceases the instant the arrestee is removed from the scene. The risk to the officer and the evidence may end long before the search of the

stopped vehicle is concluded. Support for this contention is found in several cases cited by the Connecticut Supreme Court where the search was found to be proper when the arrestee was handcuffed and/or out of the vehicle being searched, but was still at the scene. State v. Badgett, supra, at 427. Therefore the deciding factor for the Connecticut Supreme Court was that this respondent had been removed from the scene, thereby foreclosing any risk to the officers or evidence at the hands of the respondent.

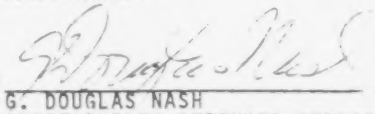
The respondent also argues that because this court did not define "contemporaneous" in Belton, the Connecticut court was bound only to a reasonable standard in defining and applying that term. Since the Connecticut Supreme Court followed the directives and heeded the concerns identified by both Chimel and Belton relative to the need to protect evidence and arresting officers, and not to allow unnecessary and unreasonable searches, it can not be said that the holding of the Connecticut Supreme Court was unreasonable.

The cases decided since Belton appear to be consistent with both the holding of the Connecticut Supreme Court as well as the principles of Chimel and Belton thus putting into question petitioner's contention that there is significant confusion and a need for guidance as to how to apply the "contemporaneous" requirement of Belton. On the one hand there are the cases where the arrestee is still on the scene where the courts have consistently held that the search incident to the arrest was proper. United States v. Cotton,751 F.2d 1146 (10th Cir. 1985); Traylor v. State, 458 A.2d 1170 (del 1983); State v. Miskolczi, 123 N.H. 626, 465 A.2d 919 (1983). On the other hand where the arrestee was removed from the scene, having been taken to the police station, the search of the vehicle he had earlier occupied was not permissible as incident to his arrest. State v. Hernandez, 410 So.2d 1381 (La. 1982)

CONCLUSION

For the reasons specified herein the respondent contends that there is no final jedgment from which the petitioner seeks certiorari; the search performed here was not an inventory search; the search performed here was incident to the respondent's arrest. The petition for certiorari should be denied.

RESPONDENT
EARL BADGETT

BY: 

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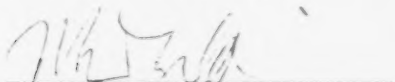

MARTIN ZELDIS
ASSISTANT PUBLIC DEFENDER

October 6,1986

No. 86-376

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STATE OF CONNECTICUT

Petitioner,

v.

EARL BADGETT,

Respondent,

APPENDIX

OF THE

RESPONDENT

FOOTNOTE IN PETITIONER'S
BRIEF IN THE CONNECTICUT SUPREME
COURT REGARDING INVENTORY
SEARCH

At Page 36

7. The defendant also contests the third ground of the trial court's denial of his motion to suppress, i.e. that the search was a valid inventory search. Defendant's Brief at 12-14. The state does not address this issue in its brief, because the record demonstrates that the trial court correctly upheld the search on grounds that it was incident to the defendant's arrest and was based on probable cause to search for weapons. Therefore this Court can sustain the trial court's ruling on those grounds and need not reach the question of inventory search. Cf. State v. Geyer, 194 Conn. 1, 17, 480 A.2d 489 (1984) (Shea, J. Concurring).